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Security Council

Sixty-third year

Provisional

5863rd meeting

Tuesday, 8 April 2008, 3 p.m.

New York

President:	Mr. Kumalo	(South Africa)
Members:	Belgium	Mr. Verbeke
	Burkina Faso	Mr. Kafando
	China	Mr. Liu Zhenmin
	Costa Rica	Ms. Villalobos
	Croatia	Mr. Skračić
	France	Mr. Ripert
	Indonesia	Mr. Natalegawa
	Italy	Mr. Mantovani
	Libyan Arab Jamahiriya	Mr. Mubarak
	Panama	Mr. Suescum
	Russian Federation	Mr. Rogachev
	United Kingdom of Great Britain and Northern Ireland	Mr. McKenzie Smith
	United States of America	Mr. Khalilzad
	Viet Nam	Mr. Bui The Giang

Agenda

The situation in the Middle East

Letter dated 28 March 2008 from the Secretary-General addressed to the President of the Security Council (S/2008/210)

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08-29745 (E)

The meeting was called to order at 3.05 p.m.

Adoption of the agenda

The agenda was adopted.

The situation in the Middle East

Letter dated 28 March 2008 from the Secretary-General addressed to the President of the Security Council (S/2008/210)

The President: I should like to inform the Council that I have received a letter from the representative of Lebanon in which he requests to be invited to participate in the consideration of the item on the Council's agenda. In accordance with the usual practice, I propose, with the consent of the Council, to invite that representative to participate in the consideration without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, Mr. Salam (Lebanon) took a seat at the Council table.

The President: In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Mr. Daniel Bellemare, Commissioner of the United Nations International Independent Investigation Commission.

It is so decided.

I invite Mr. Bellemare to take a seat at the Council table.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them document S/2008/210, which contains a letter dated 28 March 2008 from the Secretary-General addressed to the President of the Security Council, transmitting the tenth report of the International Independent Investigation Commission.

At this meeting, the Security Council will hear a briefing by Mr. Daniel Bellemare, Commissioner of the United Nations International Independent Investigation Commission. I now give the floor to Mr. Bellemare.

Mr. Bellemare: "Terrorism is never justifiable on any ground.... It hurts all nations — large and small, rich and poor. It takes a toll on human beings of every age and income, culture and religion." Those are the words of Secretary-General Ban Ki-moon. Those words act as a constant reminder for the members of the Commission over which I have the honour and the privilege to preside.

This is my first appearance before the Security Council since I took office last January. I would like to thank members for the opportunity to brief the Council on the progress made by the International Independent Investigation Commission.

It is my honour to present today the tenth report of the Commission. As requested, it outlines progress made since 28 November 2007 in the investigation of the assassination of former Prime Minister Rafiq Hariri and the 22 others who were killed during the attack, and of other attacks that fall within the mandate of the Commission. Since this is the first time I am addressing the Council both as Commissioner and as Prosecutor Designate, I would like to take this opportunity to share a few thoughts on how I approach my role.

The mandate that the Council gave the Commission in 2005 is particularly challenging. Not only is the investigation objectively very complex, it is also being conducted in a politically charged climate and in an extremely volatile environment. Unfortunately, the establishment of the Commission has not had an immediate deterrent effect on terrorists. Bombings have continued, with two more deadly attacks that have been added to the Commission's mandate since the last report.

Our investigation involves a series of terrorist attacks which have killed 55 people and injured over 420. The magnitude of the attacks, their continuing nature and the fact that investigations are conducted in an environment dominated by ongoing security concerns add to the challenges facing the Commission.

Members may rest assured, however, that the Commission will not be deterred by the prevailing violence. On the contrary, each attack increases the resolve of the men and women of the more than 60 countries that have answered the call for help and are

fully committed to bringing an end to impunity in Lebanon.

My mission's overarching principle is to ensure that justice is done. With that in mind, the Commission will yield to no pressure, political or otherwise, and the identification of suspects will be based on sound legal standards supported by concrete evidence.

Acting under the flag of the United Nations, it is against that uniquely challenging backdrop that the Commission advances its mandate in a neutral and objective manner. In doing so, the Commission must continue to keep an open mind and not presuppose the outcome. As Carla del Ponte once said, "facts are pieces of truth on the way to justice". In its search for truth and justice, applying basic principles of fairness, neutrality and impartiality, the Commission must be guided by facts and evidence. Everything else is irrelevant. To act otherwise would be to fail the international community and, in particular, the people of Lebanon.

The Commission is an independent body. It was created to help put an end to impunity in Lebanon by making sure that the perpetrators of the attacks falling within the mandate of the Commission have no safe haven and that they are eventually brought to justice.

Independence, however, does not mean isolation; nor does it mean that the Commission operates in a vacuum. Quite the contrary, because the Commission is acting under the flag of the United Nations, it is also acting on behalf of Member States. Member States have provided assistance to the Commission when their assistance was sought. I thank them for their support. Indeed, Member States should continue to ask themselves whether and how they can assist the Commission. In doing so, they can be forthcoming and proactive; their assistance does not have to be predicated on the existence of specific requests made by the Commission.

Members of the Security Council are familiar with the constraints faced by the Commission regarding the disclosure of its findings. The Commission has to constantly find a delicate balance between its reporting obligations and the need to preserve the confidentiality of the investigation. The need for confidentiality is obvious; it is necessary to maintain the integrity of the process. Indeed, the Commission cannot ignore the fact that the perpetrators are watching every move it makes.

However, we have every intention of being transparent, to the extent possible, without jeopardizing the security or the safety of those who want to cooperate with us — and who may eventually be called upon to appear before the Tribunal — and the security and safety of our staff. Transparency is essential to maintain the confidence of the public in the Commission as an institution and the trust in its operations.

Public expectations are high. That is understandable. The many steps taken towards the creation of the Special Tribunal for Lebanon may have created an impression that the conclusion of the investigation was imminent. In addition, public speculation on the timing of possible indictments may also have fuelled the rising expectations.

Regrettably, we cannot prevent speculation, but public expectations must be addressed. That is why it is both useful and important to send the clear message that the search for justice cannot be rushed — it must follow its course. Any illusion of immediacy must be dispelled. Our progress is neither slow nor immediate — it is deliberate. With that in mind, let me now update the Council on the progress made in the past four months, including new developments in the Commission's work and challenges ahead.

First, in relation to the investigation of the Hariri case and the 22 others who were killed during the attack, the Commission can now confirm, on the basis of evidence, that a network of individuals acted in concert to carry out the assassination of Rafiq Hariri and that this network — which has been referred to as the "Hariri network" — or parts of the network are linked to some of the other cases within the Commission's mandate.

It is probably useful for me to pause at this time and to clarify two points. First, let me say a few words about the use in the report of the words "criminal network". Those words should be read in the context of the whole report, which clearly refers to a terrorist investigation. The direction of the investigation has not changed, and the Commission is still investigating crimes that are politically motivated. Secondly, while previous reports have referred to the hypothesis of a network, what is new this time is that we now have the evidence of the existence of such a network and of its links.

The Commission has also gathered evidence that the Hariri network existed before the Hariri assassination; that it conducted surveillance of Mr. Hariri before his assassination; that it operated on the day of Mr. Hariri's assassination; and that at least part of the network continued to exist and operate after Mr. Hariri's assassination.

Our priority is now to gather more evidence about the Hariri network, its scope, the identity of all of its participants, their links with others outside the network and their role in the attacks. In relation to the other attacks that fall within its mandate, the Commission has continued to assist the Lebanese authorities in providing a number of measures of technical assistance, ranging from forensic analysis to reviewing imagery materials. The Commission has continued to investigate possible links between those cases and the Hariri case.

The technical assistance provided to our Lebanese hosts is not only meant to support the cases at hand; it is also designed to allow the Lebanese authorities to build capacity for the future. In that regard, the Commission would like to note, however, that the sooner its assistance is requested, the more likely that technical assistance can be meaningful.

The mandate and the work of the Commission are ground-breaking. Methods of investigations used in a traditional domestic setting have to be adapted to the existing environment. Operational imperatives or administrative challenges like staff recruitment and retention must be addressed with creativity. The Commission's needs and requirements may often stretch the limits of existing United Nations policies. Off-the-shelf solutions are not necessarily suited to the pursuit of a precedent-setting mission like ours. Every day we must adjust, invent and create new ways to advance our operations.

Much is said and written about the Tribunal. As Prosecutor Designate of the Tribunal, I will only state that the filing of eventual indictments will not be immediate after the establishment of the Tribunal. The admissible evidence will have to be carefully and objectively considered in light of the applicable prosecution threshold. No one can predict or dictate how long this process will take.

As Louise Arbour said when she was Prosecutor at the ICTY:

> "An independent Prosecutor must be able to stand apart from national politics, the interests of individual States and the goals of any particular foreign policy. Indeed, not only must the Prosecutor stand apart from such considerations, he or she must stand above them, and be fully prepared without fear or favour to contradict them or to challenge political pressures which may seek to influence the course of justice."

That being said, however, ideally the time between the establishment of the operations of the Tribunal and the eventual filing of indictments should be as short as possible. That is the reason why the progress of the investigation becomes such a crucial element in determining when the Tribunal will commence its operation.

As a result, while the preparatory steps for the establishment of the Special Tribunal for Lebanon are continuing, I would request this Council to consider extending the Commission's mandate beyond the date of 15 June 2008. That would give the Commission the needed time to continue its investigation. It would also provide a desirable measure of stability and predictability for our staff.

In conclusion, let me say that any unnecessary delay in finding the truth and bringing the perpetrators to justice must be avoided. But, as I have mentioned before, the search for justice must be allowed to follow its course. In saying so, I understand and share the frustration of the surviving victims, the families of the deceased and the people of Lebanon who expect quick results. Though legitimate and understandable, that frustration must not be allowed to undermine the trust and the confidence that members of the international community and the people of Lebanon have placed in the Commission and in its process.

With the continued assistance of Member States and the ongoing support of the Lebanese authorities, I can assure the Council that no effort will be spared to expedite the process as much as humanly possible.

Mr. Rogachev (Russian Federation) (*spoke in Russian*): I would like to thank Mr. Bellemare for his briefing.

I would like to receive, for the first time, information on a number of elements of the big picture of the investigation of the killing of the former Prime Minister of Lebanon, Rafiq Hariri, and the fate of the

former Director General of General Security in Lebanon, General Jamil Al Sayed, and the three other former heads of the Lebanese Special Services suspected of being part of the assassination of Prime Minister Hariri.

Do we correctly understand that these four people have been in prison for almost three years now, with no indictment and that they have been detained on the recommendation of the first head of the Commission? And that this recommendation in considered to still be in force?

The President: I now give the floor to the representative of Lebanon.

Mr. Salam (Lebanon) (*spoke in Arabic*): Allow me at the outset, on behalf of Lebanon, to congratulate you, Mr. President, and your friendly country on assuming the presidency of the Security Council this month. Let me also express our sincerest appreciation to the delegation of the Russian Federation for its presidency of the Council last month.

We meet today to discuss the tenth report of the International Independent Investigation Commission on the crime of the assassination of former Prime Minister Rafiq Hariri and his companions. Since the last report of the Commission, two new crimes have been perpetrated, the first targeting General François al-Hajj and the second, Major Wissam Eid. They were both martyred, along with a new number of civilian victims.

Thus the number of crimes for which the International Commission is providing technical assistance to the Lebanese authorities in their investigation has reached 20. They are all acts of terrorism aimed at destabilizing Lebanon through the targeting of free thinkers and politicians, as well as leaders of both the military and security establishments. On top of this, many innocent people in the safe havens of their homes and places of work have been targeted.

That series of cowardly, terrorist attacks has resulted in the deaths of 61 people and the wounding of no less than 494 others. We must also recall here that the cowardly hand of terrorism has also reached out targeted elements of the United Nations Interim Force in Lebanon in southern Lebanon, as well as members of the diplomatic corps accredited to Lebanon.

Lebanon is making many sacrifices for its freedom. They are only matched by our determination and by the Council's determination, through the International Commission, to find out the truth, to find out who plotted, participated in and perpetrated such crimes. There are many sacrifices that Lebanon is making for its freedom. They are only matched by our insistence, and the Council's, on setting up the Special Tribunal for Lebanon with an international character to ensure that there will be no impunity for the perpetrators.

Our search for truth has never been for the sake of revenge. We have sought the truth in order to help our people heal the wounds caused by this series of terrorist attacks. We are on a path that you, Mr. President, know more than any other, as your great country, South Africa, has had a leading experience, together with Bishop Desmond Tutu, in stressing the importance of truth in overcoming the pains that your people have suffered. As truth, as former President Nelson Mandela said, helped your country to find common understanding of its path, we also hope that truth will help us reach a common understanding of this chapter in the history of our country.

Our seeking to set up the Special Tribunal for Lebanon, a tribunal with an international character, has always sought justice in order to deter terrorists from perpetrating their crimes in order to restore stability and security to our country and to restore a sense of civility and safety to our people.

I have listened very carefully to the statement made by Commissioner Daniel Bellemare. On behalf of the Government of Lebanon, I should like to reiterate our congratulations to him on his assumption of office. Allow me also to express our sincere appreciation of his sense of leadership and the great professionalism he has demonstrated since taking over the Commission at the beginning of this year. I should also like to convey our most heartfelt thanks to all of those working in the Commission for their excellent work. With regard to the substance of Mr. Bellemare's statement and the Commission's tenth report, which has now been transmitted to the Council, I should like to make the following observations on behalf of my delegation.

First, we pay tribute to the Commission, in the person of its Commissioner and members, for carrying out their work in difficult security conditions and for the success they have achieved in more than doubling — from 123 to 256 — the number of the Commission's requests for assistance to Lebanon and

other States. We also welcome the Commission's flexibility with regard to those requests for assistance, as well as for seeking assistance from the largest number of international forensic laboratories in order to achieve results as soon as possible.

Secondly, we welcome the concrete results achieved by the Commission on the basis of the evidence it continues to collect, in particular as that has enabled the Commission to ascertain that the assassination of former Prime Minister Hariri was carried out by a criminal network, that some parts of that network are linked to a number of other crimes covered by the Commission's mandate, that that network was in place prior to Prime Minister Hariri's assassination and that elements of the network are still in place and continue to operate.

Thirdly, we would like to draw the Council's attention to the fact that the Commission is continuing to cooperate with Lebanese judicial authorities — whether with regard to exchanges of information, the holding of meetings, evaluating evidence or preparing for future stages of the current investigation. We would also like to reiterate the commitment of the Government of Lebanon to ensuring full protection for the headquarters and members of the Commission.

Fourthly, having read last year's report of the Secretary-General to the Security Council (S/2007/525) on the important progress made in the steps to establish the Special Tribunal for Lebanon — including the signing of the headquarters agreement, the selection of judges, the appointment of the Registrar, the establishment of the administration and the collection of a large number of necessary financial contributions — we would like to welcome the reference in Mr. Bellemare's report regarding the completion of the necessary steps for the transitional period prior to the establishment of the Tribunal and for the transfer of evidence and other judicial matters.

The delegation of Lebanon takes note of Mr. Bellemare's request that the Commission's mandate be renewed. Let me assure the Council that my Government will look most favourably on the matter.

The President: I now give the floor to Mr. Bellemare to respond to the comments and questions raised.

Mr. Bellemare: I thank the representative of the Russian Federation for his question. The first thing that I would like to say is that the situation of the individuals he referred to results from a decision that was made by the Lebanese judicial authorities according to Lebanese criminal law. It is not for me to second-guess their decision. I have continued to provide the Lebanese judicial authorities with all the information we have, so that they can make their own assessment on the continued detention.

I have discussed the matter with the Prosecutor General of Lebanon; but the Council will understand that I will not comment publicly on my discussion with him. The Prosecutor General is the highest judicial investigative authority in Lebanon, and he is my main interlocutor. My relationship with him is based on trust, and that trust is based on the confidentiality of our discussions. I also understand, from recent media reports, that the matter may soon be litigated before an international tribunal, which is yet another reason for me not to comment further.

The President: I thank Mr. Bellemare for his further comments.

There are no further speakers inscribed on my list. In accordance with understanding reached in the Council's prior consultations, I now invite Council members to informal consultations to continue our discussion on the subject.

The meeting rose at 3.35 p.m.